

**FUNERAL DIRECTORS EXAMINING BOARD
MINUTES
MADISON, WISCONSIN
NOVEMBER 6, 2001**

PRESENT: W. Robert Cress, Dan Densow, Bonnie Gift, Roy Pfeffer, Peter Schils
and Rick Unbehau,

EXCUSED:

STAFF PRESENT: Clete Hansen and Jacquelynn Rothstein, Legal Counsel; Judy Mender
and Division of Enforcement staff for portions of the meeting.

GUESTS: Erin Longmire, FSA
Mark Krause
Mark Paget, WFDA

CALL TO ORDER

The meeting was called to order at 9:46 a. m. by Roy Pfeffer, Chair. A quorum of 6 members was present.

AGENDA

MOTION: Rick Unbehau moved, seconded by Robert Cress, to approve the agenda as written. Motion carried unanimously.

MINUTES (9/19/01)

MOTION: Dan Densow moved, seconded by Bonnie Gift, to approve the minutes after correcting the spelling of "STIPULATION" at two locations on page 6 of the minutes. Motion carried unanimously.

ADMINISTRATIVE REPORT

Bureau Director's Report

- **Board Roster**

Peter Schils stated that this would be his last meeting and that he will not be able to screen complaints any longer. The Board thanked Mr. Schils for his conscientious participation as a Board member. Dan Densow volunteered to replace Mr. Schils as a case screener.

- **2002 Meeting Dates**

The Board approved the proposed list of meeting and screening dates for 2002, except that the Board changed March 19 to March 12 (screening and meeting), October 21 to October 14 (screening only) and November 19 to November 12 (screening and meeting).

- **Summary Report on Pending Court Cases, Disciplinary Cases and Administrative Rules**

Noted

- **To-Do List**

Noted

- **To-Pass Folder**

The To-Pass Folder was circulated and duly noted.

LEGISLATIVE UPDATE

Regulation of Crematories

The Board reviewed LRB-2804/P1dn and made the following recommendations to Mark Kunkel, a Legislative Attorney in the Legislative Reference Bureau:

Page 3, the Note following line 15 – the Board likes this provision; however, the provision should, perhaps, pertain to any person that receives cremated human remains for disposal, not just cemeteries. Please consider whether this provision might fit better in statutes relating to vital statistics.

Page 4, the Note following Line 3—yes this fine.

Page 5, the Note following line 9 – yes, this is fine.

Page 5, the Note following line 10 – yes. Refer Mr. Kunkel to a definition that he drafted in LRB-0160/3: “Columbarium” means a building, structure, or part of a building or structure that is used or intended to be used for the inurnment of cremains.” Mr. Kunkel had also defined “columbarium space” to mean a niche, crypt, or specific place in a columbarium that contains or is intended to contain cremains.

Page 5, the Note following line 11 – remove “all.” Also, “recovered” is a better term, because not all of the cremated remains are recovered.

Page 5, line 20 – state: “a person who owns or operates a crematory.”

Page 6, the Note following line 2 – okay.

Page 6, the Note following line 12 – no exemptions are needed at this time. If certain persons feel they should be exempted, they can make their case after introduction of the bill.

Page 7, the Note at the top of the page – no competency standards are needed. The committee that developed the proposal focused on standards of operation. The committee also reviewed the statutes of other states and noted that only Florida has competency standards.

Page 7, the first Note following line 1 – no competency standards are needed.

Page 7, the second Note following line 1 – okay, leave out “reasonably.”

Page 7, the Note following line 8 – yes, it could be a total stranger. That can actually happen. Insert, with proper references, the provision that was in the proposal sent to the LRB. See page 4. It reads: “(6) In the absence of any person under subd. (1) through (5) any person willing to assume the responsibility as the authorizing agent....”

Page 7, the Note following line 15 – the intent is that this should refer to the written objections of any equally-related persons, *i.e.*, the persons described in each paragraph under 445.32 (1).

Page 8, the Note following line 17 – okay.

Page 8, the Note following line 22 – okay.

Page 9, the first Note at top of page – okay.

Page 9, the second Note at top of page – A set priority is needed for practical reasons. See the order in the Board’s proposal on page 3, Section (5), at the bottom of the page. It should say: “the following persons, in the priority listed, may serve as the authorizing agent.”

Page 9, the Note following line 3 – the Board is confused by lines 1 to 3. What is the drafter trying to say?

Page 9, the Note following line 11 – objection can only be made by the persons in 445.32 (1) (a) to (d), and in the same order of priority as in (a) to (d).

Page 9, the Note following line 17 – the provision in the Board’s proposal on page 4, (7), should be inserted here. It is feasible that a person would authorize another person to serve as the authorizing agent for his or her own body part, because a person may be mentally incapacitated following a procedure.

Page 10, the Note following line 3 – no rules are needed to establish a form.

Page 10, the Note following line 4 – both the time and date are needed.

Page 10, the Note following line 14 – okay.

Page 10, the Note following line 16 – yes, it is. “If known” should not be deleted.

Page 11, the first Note following line 12 – the Board wishes to include electronic communication, particularly, facsimile transmissions.

Page 11, the second Note following line 12 – the Board wishes to allow an authorizing agent to delegate authority to anybody, because this is a practical matter that can occur (for example, a person who is overseas).

Page 11, the Note following line 15 – the Board prefers the language in its proposal; however, the Board would accept the drafter’s language if legally sufficient to encompass misrepresentations.

Page 12, the Note at the top of the page – okay.

Page 12, the Note following line 16 –there should be two receipts: one for when the body is brought into the crematory, the other when the cremains are released by the crematory. Two separate parties can be involved in this receipting process.

Page 13, the Note following line 11 – no. The family may be much more aware that a device was implanted than a funeral home would be. This should be on the authorization form. It should be in both places. Okay to the drafter’s second comment, that is, to use language that is broader *e.g.*, “any type of device that is hazardous”.

Page 13, the Note following line 12 – paragraph (b) should be retained, with the exception of subd. (5).

Page 14, the Note at the top of the page – this is not a problem.

Page 14, the Note following line 3 – yes, Mr. Kunkel should revise this item, as he suggests. Also, Lines 5-7, refer to a “cemetery” authority. Those references should be changed to “crematory” authority.

Page 14, the first Note following line 10 – yes, this is okay.

Page 14, the second Note following line 10 – yes, please make it clearer that such a person should be unable to refuse.

Page 14, the Note following line 13 – okay.

Page 15, the Note following line 11 – “alternative container” is the accepted word in the industry and is used in its marketing efforts. The Board prefers using the definition in its proposal. Replace “personal integrity” in the Board’s draft with “health, safety and welfare.”

Page 15, the Note following line 18 – “Unless the crematory authority receives...” The rest is okay.

Page 16, the Note following line 14 – keep this provision in the draft.

Page 17, the first Note following line 11 – yes to each one of Mr. Kunkel’s questions.

Page 17, the second Note following line 11 – okay.

Page 17, the third Note following line 11 – okay.

Page 17, the first Note following line 13 – no limitation needed.

Page 17, the second Note following line 13 – the decedent’s estate could be liable, along with or separate from the authorizing agent.

Page 18, the Note at the top of the page – remove “scattering” in front of “area.” Change the concept to read: “in a lawfully-permitted area.”

Page 18, the Note following line 6 – insert the following from the Board’s proposal on page 9, Section 22, paragraph 1, sentence 2: “This prohibition does not apply to the scattering of cremated remains on the land, sea or air.” The Board wishes to differentiate between such scatterings and a scattering in a place that has been designated and established specifically for scattering cremains.

Page 18, the Note following line 11 – it should read, “inorganic or organic.”

Page 18, the second Note following line 11 – okay.

Page 18, the Note following line 13 – the Board believes there is no other law. The Board prefers its language regarding “in a lawful manner.”

Page 19, the Note following line 9 – okay.

Page 19, the Note following line 14 – okay.

Page 21, the Note following line 9 – okay.

Page 21, the Note at the top of the page – okay. Choose a reasonable date.

MOTION: Rick Unbehau moved, seconded by Robert Cress, to permit Dan Densow to review the next draft and to decide whether a special meeting or a telephone conference call is needed. Motion carried unanimously. (Peter Schils was not present for the motion and was not present for any of the remaining items on the agenda.)

The Board discussed the names of legislators who might want to sponsor the bill. Senators Rosenzweig and Plache, and Representative Ziegelbauer are possibilities.

SB-171 and AB 376, Relating to Funeral Establishment Permits

The Board noted copies of the Legislative Reports, relating to the Senate hearing and the Assembly hearing, correspondence sent to the Senate Committee by Clete Hansen, a copy of a draft of a Senate Substitute Amendment To 2001 Senate Bill 171, a copy of a letter sent to Tom Sheehan concerning the number of funeral directors and funeral establishments licensed since 1990, and copies to newspaper articles concerning this proposed legislation.

The Board received comments from representatives of the Wisconsin Funeral Directors Association (WFDA) and the Funeral Service Alliance of Wisconsin (AFS). Mark Paget said that the WFDA would prefer that keeping the bill, as drafting. The WFDA believes that the AFS's proposed amendments go beyond the intent of the bill. Mark Krause said that the AFS believes that the embalming room issue should be included in the bill or it will get lost. He discussed the economics of the issue. Representatives of the associations said that some discussions have taken place concerning a compromise. Some people have suggested a grandfather clause (i. e. one embalming room for every three funeral homes that are already operating in the industry), others have suggested the grandfather clause, plus a differentiation between rural and urban areas (i. e. one preparation room within a 25-miles radius for rural areas, and one preparation room within a radius of 15 miles for urban areas).

MOTION: Dan Densow moved, seconded by Bonnie Gift, to take no action on this legislation at this time. Motion carried unanimously.

Other Legislation

None

ADMINISTRATIVE RULES

Clete Hansen announced that the proposed rule revisions will become effective on December 1, 2001. The Board discussed correspondence received from Mark Paget, dated July 18, 2001, regarding the approval of programs that do not have specific instructors, such as roundtable discussions and exhibits.

MOTION: Dan Densow moved, seconded by Rick Unbehaun, to approve instructors for roundtable discussions on a case by case basis, provided that there is a designated discussion leader who meets the criteria for instructor approval, as in the new rules. Motion carried unanimously. (Peter Schils was not present.)

MOTION: Robert Cress moved, seconded by Dan Densow, that the Board will no longer provide continuing education credits for attendance at exhibits. Motion carried unanimously. (Peter Schils was not present.)

EXAMINATION ISSUES

The Board reviewed and discussed several memorandums submitted by Judy Mender. One memo was entitled, "New Procedures For the Initial Exam." The other memo was entitled, "NBE Statistics."

BOARD MEMBER ACTIVITY

There was nothing of significance to report.

APPOINTMENT OF COMMITTEE TO REVIEW STATUTES AND RULES

Roy Pfeffer said that he had briefly gone through the Wisconsin statutes and rules, to find examples of items that may be out-of-date or unnecessary. He identified the following four examples: ss. 445.04 (more and more families want to have funerals in their homes), 445.045 (the reference to the Koran War is too narrow), 445.105 (the language ignores synagogues, mosques, high school auditoriums, for example), 445.095 (sophomore standing may be unnecessary).

This agenda item was informally tabled until the next meeting.

Clete Hansen said that he is still planning to put an article in the next issue of the Regulatory Digest and solicit suggestions from licensees.

REMOVALS BY UNLICENSED PERSONS

The Board reviewed a memorandum prepared by Jacquelynn Rothstein on November 5, 2001. The Board expressed reservations about the interpretation of the applicable statutes and requested that Ms. Rothstein ask the Department's General Counsel to review this opinion. Mark Paget informed the Board that some funeral establishments are using unlicensed persons to remove bodies.

MISCELLANEOUS CORRESPONDENCE/INFORMATION

Seasonal Burials

Informational materials noted.

Letters to be Sent to Persons Holding or Wishing to Hold a Certificate in Good Standing

Drafts of letters were reviewed by the Board.

Correspondence With Mark Paget of the WFDA, Regarding Licensing Statistics

The Board noted the letter sent to Mr. Paget on November 6, 2001.

Correspondence With Oak Ridge Cemetery Association

The Board noted the letter that Jacquelynn Rothstein had sent to Oak Ridge Cemetery Association on October 31, 2001. The letter pertained to the sale of land by the Cemetery Association to a funeral home.

NEW BUSINESS

MOTION: Rick Unbehaun moved seconded by Bonnie Gift, that the Board should say the Pledge of Alliance before each Board meeting. Motion carried unanimously. (Peter Schils was not present.)

PUBLIC COMMENTS

None, over and above those already made during the discussion of specific topics.

RECESS TO CLOSED SESSION

MOTION: Rick Unbehaun moved, seconded by Dan Densow, to convene the meeting in Closed Session pursuant to Sections 19.85(1)(a), (b), (f), and (g), Wis. Stats., to consider the licensing or discipline of persons licensed by the Board or the investigation of charges against such a person. Specifically, to discuss the issue of case status reports, case closings, monitoring issues, extension requests, and pending applications. Motion carried unanimously by a roll call vote: Bonnie Gift-yes; Bob Cress-yes; Rick Unbehaun-yes; Dan Densow - yes; Roy Pfeffer-yes. (Peter Schils was not present.)

Open Session recessed at 2:05 p. m. and Closed Session convened at 2:15 p.m.

CLOSED SESSION

The Board deliberated on one case closing, an application for reinstatement, and a request for reconsideration of license denial.

RECONVENE IN OPEN SESSION

MOTION: Bonnie Gift moved, seconded by Robert Cress, to reconvene in Open Session at 3:50 p. m. Motion carried unanimously. (Peter Schils was not present.)

VOTING ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

CASE CLOSING

MOTION: Rick Unbehaun moved, seconded by Robert Cress, to close Case 01 FDR 002, for insufficient evidence. Motion carried unanimously. (Dan Densow, the case adviser, abstained; Peter Schils was not present.)

REQUEST FOR REINSTATEMENT

Mark Laemmrich (Neenah, WI)

MOTION: Bonnie Gift moved, seconded by Rick Unbehaun, to deny Mr. Laemmrich's request for reinstatement, because Mr. Laemmrich has not demonstrated sufficient rehabilitation, in part based on a letter received from his probation officer. The motion was carried unanimously. (Peter Schils was not present.)

PENDING APPLICATIONS

None

RECONSIDERATION OF LICENSE DENIAL

Bruce Kalm (Ironwood, MI)

MOTION: Dan Densow moved, seconded by Robert Cress, to reconsider the application of Bruce Kalm for a funeral director's license and to grant a license to him. Motion carried unanimously. (Peter Schils was not present.)

ADJOURNMENT

MOTION: Rick Unbehaun moved, seconded by Bonnie Gift, to adjourn the meeting at 3:55 p. m. Motion carried unanimously.

Next Meeting Date: January 15, 2002